

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21st Floor  
San Francisco, California 94105**

**RH 03030475**

**September 17, 2003**

**NOTICE OF PROPOSED ACTION AND  
NOTICE OF PUBLIC HEARING**

**AMENDMENT TO "PRINCIPALLY AT FAULT" REGULATION**

**SUBJECT OF HEARING**

The Insurance Commissioner proposes to amend Title 10, Chapter 5, Subchapter 4.7, Article 4, Section 2632.13 of the California Code of Regulations after considering comments from the public. The amendment will eliminate the existing requirement for automobile insurers to ascribe a specific percentage of fault to various drivers when determining who was principally at fault for an accident. The amendments also modify the insured's right to seek reconsideration of the insurer's determination of fault to conform to the reduced insurer requirement.

**AUTHORITY AND REFERENCE**

The Commissioner proposes these amendments to the regulations under the authority of California Insurance Code Sections 1861.025 and 12921, *CalFarm v. Deukmejian* (1989) 48 Cal.3d 805, 825 [258 Cal.Rptr. 161] and *20th Century v. Garamendi* (1994) 8 Cal. 4th 216, 280 [32 Cal.Rptr.2d 807], which recognize the Commissioner's implied authority to exercise those powers that may fairly be implied by statute.

**PUBLIC HEARING**

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to these proposed amendments, as follows:

<b>Date and time:</b>	<b>Thursday, November 20, 2003 10:00 AM</b>
<b>Location:</b>	<b>Department of Insurance Hearing Room 45 Fremont Street, 22nd Floor San Francisco, CA 94105</b>

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

## **PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS**

All persons are invited to present oral and/or written comments at the scheduled hearing. Written comments not presented at the hearing must be addressed to the following contact person:

### **Primary Contact:**

**Daniel Goodell, Sr. Staff Counsel  
California Department of Insurance  
45 Fremont Street, 21st Floor  
San Francisco, CA 94105  
Telephone: (415) 538-4191**

### **Alternate Contact:**

**Bryant Henley, Staff Counsel  
California Department of Insurance  
45 Fremont Street, 21st Floor  
San Francisco, CA 94105  
Telephone: (415) 538-4111**

Questions regarding the hearing, comments, or the substance of the proposed action should be addressed to the above contact person.

## **DEADLINE FOR WRITTEN COMMENTS**

All written materials must be received by the Commissioner, c/o the contact person at the address listed above, by no later than **5:00 p.m. on Thursday, November 20, 2003**. Any materials received after that time will not be considered.

## **COMMENTS TRANSMITTED BY ELECTRONIC COMMUNICATION**

The Commissioner will accept written comments transmitted by e-mail, provided they are sent to the following e-mail address: [goodell@insurance.ca.gov](mailto:goodell@insurance.ca.gov). The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of the contact person listed above. All comments sent by facsimile must be directed to the attention of Daniel Goodell using the following fax number: (415) 904-5490. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline for written comments set forth above. Comments shall be submitted by only one of the above-described methods.**

## **ACCESS TO HEARING ROOMS**

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed above) for this hearing in order to make special arrangements, if necessary.

## **ADVOCACY OR WITNESS FEES**

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of subchapter 4.5, title 10, of the California Code of Regulations, in connection with their participation in this matter. Persons interested in inquiring about the appropriate procedures

should contact the Office of the Public Advisor at the following address:

Natasha Ray, Sr. Staff Counsel  
California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, 17<sup>th</sup> Floor  
Sacramento, CA 95814  
Telephone: (916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing, listed above. Please contact the Office of the Public Advisor for further information.

## **INFORMATIVE DIGEST**

### **Summary of Existing Law**

Existing law (CIC § 1861.025) sets forth criteria that a person must meet to qualify to purchase a Good Driver Discount policy, as defined in CIC § 1861.02. One of the criteria is partially based on the number of automobile accidents for which the driver was "principally at fault." Existing law (CCR §2632.13(e)) further requires the insurer to investigate an accident and determine whether the insured was principally at fault before counting the accident against the insured. Under CCR §2632.13(c) a driver may only be considered "principally at fault" if the driver's actions or omissions were at least 51% of the proximate cause of the accident. Under CCR §2632.13(e) an insurer must notify the insured of any determination that the insured was principally at fault, including the percentage of fault ascribed to the insured. Under CCR §2632.13(e) the insured has the right to request reconsideration of the insurer's determination of fault for an accident.

### **Policy Statement Overview**

The controlling statute (CIC § 1861.025) only allows an insurer to charge an accident against an insured if the insured was "principally at fault." Under CCR §2632.13 a driver is generally considered principally at fault for an accident whenever the driver's actions or omissions were at least 51% responsible. The exact percentage of fault is irrelevant -- as long as it was at least 51%. Further, insurers' determinations of percentage of fault for accidents vary widely and the industry has been unable to make these determinations in a meaningful and consistent manner.

This amendment retains the beneficial requirement that insurers must investigate accidents before determining whether the driver was principally at fault. These amendments eliminate the requirement for insurers to determine the specific percentage by which drivers are at fault for accidents, and corresponding notice and reconsideration provisions.

### **Effect of Proposed Action**

When determining whether a driver was principally at fault for an accident pursuant to CCR §2632.13, insurers will no longer be required to specify the exact percentage of fault.

## **PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS (Government Code §11346.45)**

The proposed amendments do not involve complex proposals or a large number of proposals and can easily be reviewed and considered by the public during the comment period. Accordingly it is not necessary to involve parties, subject to the proposed amendments, in public discussions regarding the amendments prior to publication of this notice.

The decision to promulgate these amendments was largely based on a request by the State Farm Group which pointed out, among other things, the risk that a party to a subsequent civil action may attempt to introduce an insurer's determination of percentage of fault as evidence against a policyholder.

## **MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630**

These proposed amendments do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

## **COST OR SAVINGS TO ANY STATE AGENCY**

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

## **ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES**

The Department has made an initial determination that the adoption of these amendments will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The basis for this determination is the fact that these amendments only eliminate a requirement that the existing regulations apply to certain licensees of the Department.

The Department has also made an initial determination that the adoption of these amendments will not have a significant effect on the creation of new businesses, the elimination of existing businesses or the expansion of existing businesses currently doing business within the State of California.

## **POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## **EFFECT ON JOBS IN CALIFORNIA**

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

## **IMPACT ON HOUSING COSTS**

The matters proposed herein will have no significant effect on housing costs.

## **ALTERNATIVES**

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the amendments to the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action. The purpose of the proposed amendments is to further the implementation of a statutory mandate. To date, no reasonable alternative to the proposed regulations is apparent. The Commissioner, however, invites public comment on alternatives to the regulation.

## **IMPACT ON SMALL BUSINESS**

The matters proposed herein will only apply to insurance companies, and therefore will not affect small business. (Gov. Code § 11342.610, subd. (b), para. (2).)

## **COMPARABLE FEDERAL LAW**

There are no existing federal regulations or statutes comparable to the proposed regulations.

## **TEXT OF REGULATIONS AND STATEMENT OF REASONS**

The Commissioner has prepared an initial statement of reasons that sets forth the reasons for the proposed action. The Commissioner also has available all the information upon which this proposed action is based and the express terms of the proposed action. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information contained in the rulemaking file, is available for inspection and copying **by prior appointment** at 45 Fremont Street, 21st Floor, San Francisco, California, 94105, between the

hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Written requests for the rulemaking file or questions regarding this proceeding should be directed to the contact persons listed above.

### **FINAL STATEMENT OF REASONS**

Upon **written or e-mail** request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

### **AUTOMATIC MAILING**

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Commissioner's mailing list.

### **WEBSITE POSTINGS**

Documents concerning this proceeding are also available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Select the link to either "Consumers" or "Insurers." Scroll down on the "Consumers" or "Insurers" page and click on the link titled "Proposed Regulations - Search." A search screen will appear.

To find documents concerning these proposed amendments, enter "RH03030475" (the Department's regulation file number for these regulations) in the 'Search for' field. Alternatively you can search by any part of the name of these proposed amendments (AMENDMENT OF "PRINCIPALLY AT FAULT" REGULATION).

### **AVAILABILITY OF MODIFIED TEXT OF REGULATION**

If the amendments to the regulations adopted by the Department differ from but are sufficiently related to the amendment as originally proposed, the Department will make the modified text available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these amendments prior to adoption from the contact person listed above.

Dated: September 17, 2003

JOHN GARAMENDI  
Insurance Commissioner

\_\_\_\_\_/s\_\_\_\_\_  
By: Daniel M. Goodell  
Sr. Staff Counsel